

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION REGARDING)	
COMPLIANCE OF THE STATEMENT)	
OF GENERALLY AVAILABLE TERMS)	
OF BELL SOUTH)	CASE NO. 98-348
TELECOMMUNICATIONS, INC. WITH)	
SECTION 251 AND SECTION 252(D) OF)	
THE TELECOMMUNICATIONS ACT OF)	
1996)	

O R D E R

On June 22, 1998, BellSouth Telecommunications, Inc. ("BellSouth") filed its updated Statement of Generally Available Terms ("SGAT"), with supporting documents, together with a request that the SGAT be approved by this Commission. By Order dated July 6, 1998, the Commission established this case to determine, pursuant to the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (the "Act"), at 47 U.S.C., § 252(f), whether the SGAT meets the requirements of 47 U.S.C., § 251 and 252(d) and relevant requirements of state law. The parties to Case No. 96-608¹ were also made parties to this proceeding and were invited to submit comments on the SGAT. Comments have been filed by e.spire Communications, Inc. ("e.spire"), MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively, "MCI"), Sprint Communications Company, L.P. ("Sprint"), AT&T

¹ Case No. 96-608, Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Communications of the South Central States, Inc. ("AT&T"), and the Competitive Telecommunications Association ("CompTel"). BellSouth has filed a response to those comments. The issue of whether BellSouth's SGAT complies fully with applicable law is ripe for Commission decision.

As an introductory matter, the Commission reiterates that matters relevant to Case No. 96-608, including BellSouth's actual dealings with its competitors and its technical ability to furnish nondiscriminatory access to necessary operating systems, are not at issue here. Accordingly, comments filed by the parties which discuss these issues will not be addressed herein. The sole focus of this proceeding is to determine the legal sufficiency of the SGAT as an adequate vehicle for competitive entry.

The SGAT purports to furnish legally sufficient terms regarding, inter alia, number portability, reciprocal compensation, unbundled access, collocation, rates for interconnection, transport and termination of traffic, unbundled network elements ("UNEs"), and resale of BellSouth services by competitive local exchange carriers ("CLECs"). Commenters dispute the legal sufficiency of several of these provisions. The Commission's findings regarding the relevant issues are as follows.

Operations Support Systems

Section 251(c)(2) requires BellSouth to provide interconnection and access that is at least equal in quality to that provided by BellSouth to itself. Commenters argue that the lack of clearly defined performance measurements in the SGAT render the SGAT provisions in this area inadequate. They also raise a number of issues relating to whether BellSouth can, in practice, provide nondiscriminatory access. However, performance measurements are not, in themselves, required by Section 251.

Moreover, the actual ability of BellSouth to deliver what it promises in its SGAT is not at issue. The SGAT offers electronic interfaces for pre-service ordering, service ordering and provisioning, trouble reporting, and customer usage data, as well as the option of placing orders manually.² Current systems will be updated as needed to improve operations, and CLECs choosing the SGAT will be kept informed of updates and given the option to migrate with BellSouth.³ The provision for updating these systems ensures that CLECs electing to provide service pursuant to the SGAT will be able to receive the benefits of improvements as they are made. The Commission finds no legal infirmity in the terms offered in the SGAT, and finds that performance issues pursuant to those terms are not ripe for decision. Performance measurements may very well be necessary to determine whether BellSouth's performance in actually providing nondiscriminatory access is sufficient to enable it to enter the InterLATA market. However, that issue will be addressed in Case No. 96-608.

Resale

The Act prohibits BellSouth from imposing "unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services." Once again, several commenters discuss performance issues rather than contract terms offered in the SGAT. These issues are irrelevant here. AT&T points out that the joint marketing restriction in the SGAT, at Section XIV(E) does not contain a sunset provision stating that the restrictions no longer apply when BellSouth is authorized to provide in-region, interLATA services or on February 8, 1999, whichever is earlier. Such a sunset

² SGAT at II.B.5 and 6.

³ SGAT at II B 6(f).

provision should be included pursuant to applicable law. Otherwise, except as specified elsewhere in this Order, SGAT terms regarding resale appear to be legally sufficient.

Customer Migration Issues

MCI complains that BellSouth inappropriately may require of the CLEC, at BellSouth's discretion, "proof" of authorization to migrate a customer. MCI accurately characterizes the section that contains this provision, XIV.G, as inappropriately vague. Accordingly, BellSouth shall clarify its SGAT to make it clear that BellSouth will not take upon itself the responsibility of determining whether one of its customers has, indeed, elected another local exchange carrier. Fraudulent carrier change orders will be handled by this Commission pursuant to HB 582 (eff. July 15, 1998), to be codified at KRS Chapter 278. The Commission notes that this statute requires the carrier that initiated the change, and not the customer's previous local exchange carrier, to retain proof that the change was actually requested.

MCI also points out that the SGAT charge to a local service provider for initiating an unauthorized carrier change is \$19.41, see Section XIV.H, plus the appropriate nonrecurring charge to reestablish the customer's service with his preferred provider. The SGAT does not explain how BellSouth determines whether "slamming" actually has occurred. Moreover, such a finding should be made, in any event, by this Commission rather than by BellSouth. Reestablishing a customer's service with his preferred carrier will involve a cost, and the SGAT's provision passing that cost on to the carrier initiating the change is appropriate. However, there is no reason why BellSouth should collect an additional \$19.41 in the absence of adequate cost justification. Alleged slamming violations should be reported to this Commission for resolution.

MCI correctly states that BellSouth should include in its SGAT a provision that a new CLEC customer may choose to migrate his directory listing as-is from BellSouth to his new carrier. BellSouth contends that the CLEC should provide the listing to BellSouth. However, ease of customer migration is crucial to development of local exchange competition, and BellSouth offers no reason why it should not provide "as-is" listings. BellSouth shall reform its SGAT to include such a provision.

Termination of Service and Notification of Network Changes

MCI contends that SGAT Section XIV.R is one-sided in that it contains no dispute resolution clause and only vaguely explains the reasons BellSouth may terminate service to a CLEC. As BellSouth notes, the Commission's complaint process is available pursuant to KRS 278.260. MCI also fears the section is so vague that a CLEC could have its service cut off at any time, even if it believes in good faith it is complying with the parties' agreement and with applicable rules. MCI demands that BellSouth clarify reasons for which it will terminate service and provide timely notification of termination or network changes. BellSouth says that it will provide "reasonable" notice, that the SGAT is sufficiently specific, and that the law requires nothing more. The Commission finds that prior notice of pending termination and network changes, together with available Commission complaint procedures, are sufficient protection for CLECs.

Reciprocal Compensation

Section 252(d)(2) of the Act defines just and reasonable reciprocal compensation to mean a reasonable approximation of the costs of terminating calls that originate on the network of the other carrier. Recovery of these costs must be mutual and

reciprocal. Id. Numerous commenters argue that Internet service provider traffic must be explicitly defined in the SGAT as "local" traffic for which reciprocal compensation must be paid. However, the terms of the SGAT, at I(A), adequately define "local traffic" to include telephone calls that originate in one exchange and terminate in the same exchange or in a corresponding extended area service exchange. The issue of whether Internet service provider traffic is local is before the Commission in Case No. 98-212⁴ and will be decided therein. The terms of the SGAT are silent on this specific issue and, regardless of the Commission's eventual decision in Case No. 98-212, those terms are adequate.

Switched Access and Billing Issues

Commenters argue that terminating access should be at the CLEC's tariffed rate rather than BellSouth's rate if termination is to a CLEC customer; and commenters contend the SGAT must include a provision that CLECs will be provided with access daily usage files to enable them to bill access charges. BellSouth states it will clarify the SGAT to provide that the access daily usage files will be provided. The Commission finds that the proposed clarification should be made. The Commission also finds that terminating access charges should be at the CLEC rate if the call terminates to a CLEC customer. BellSouth shall revise its SGAT accordingly.

⁴ Case No. 98-212, American Communications Services of Louisville, Inc., d/b/a e.spire Communications, Inc. and American Communications Services of Lexington, Inc., d/b/a e.spire Communications, Inc. and ALEC, Inc., Complainants v. BellSouth Telecommunications, Inc., Defendant.

Audits

Commenters contend that BellSouth's provision enabling it to perform resale audits of CLECs at its discretion is intrusive. However, BellSouth should be authorized to audit annually the services provided to CLECs to test conformity to the SGAT or its tariff. Other audit provisions are also included in the SGAT. Commenters contend these provisions are discriminatory since no reciprocal provision exists. The Commission agrees. The SGAT shall include reciprocal provisions for audit. Parties may bring disputes to the Commission's attention.

Access to Unbundled Network Elements

The SGAT, at Section II(G)(1), specifies that UNEs may be combined by means of collocation only. Numerous commenters discuss this provision of the SGAT, and correctly point out that the Act, at Section 251(c)(3) requires ILECs to provide nondiscriminatory access to UNEs "at any technically feasible point" and "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications services," and they object to BellSouth's unwarranted limitation of methods of combination to collocation alone, particularly since the Eighth Circuit Court of Appeals, Iowa Utilities, held that a CLEC is not required to own a portion of a telecommunications network before it may provide service by means of unbundled elements. In addition, the Federal Communications Commission has determined that "nondiscriminatory access" requires an ILEC to provide access that is "at least equal in quality to that which the Incumbent LEC provides to itself."⁵ The Commission finds that the requirement that a CLEC may combine UNEs only by means of collocation is both discriminatory and unwarranted. The provision violates the Act and must be reformed.

⁵ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 15658, ¶ 312, vacated in part on other grounds, Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted, ____ S. Ct. ____ (199__).

The commenters also point out that BellSouth's refusal to provide other CLECs with UNE combinations through the SGAT, while allowing AT&T and MCI to obtain them through their negotiated and arbitrated interconnection agreements, is discriminatory and therefore violates the Act. The Commission agrees. BellSouth must provide service to CLECs without discriminating among them.

Commenters also contend that the SGAT method of providing multiple UNEs to competitors violates the Act in that it is anticompetitive and discriminatory, resulting in a failure of BellSouth to provide service to CLECs at parity with service provided to itself. BellSouth, they claim, uses the "recent change" capability in its system to electronically separate and reconfigure UNEs. BellSouth states the "recent change" capability does not reconfigure UNEs, but can only disable and then re-start service. However, when no "reconfiguration" has been requested by a CLEC, there appears to be no reason the "recent change" capability cannot be used to provide UNEs to CLECs. Appropriate, one-time, cost-based compensation may be required by BellSouth for performing this procedure.

The SGAT provides that physical separation of UNEs that were previously combined by BellSouth will occur when they are ordered by a CLEC, even though those elements are currently combined. This provision is unacceptable. Such separation and subsequent recombination would serve no public purpose and would increase costs that ultimately would be passed on to the consumer. Simply put, it is an unnecessary disruption and as several commenters point out, would necessarily result in provision of inferior service to the CLEC's customers. For such an operation to take place, the customer's line must unnecessarily be taken out of service. In addition, the CLEC

would incur entirely unnecessary expense and loss of customer goodwill. While BellSouth may charge a reasonable, non-recurring, cost-based "glue charge" for its expertise in having combined the UNEs, thus receiving some increment above the total cost of the unbundled elements bought by the CLEC, the Commission finds that neither BellSouth nor any other ILEC shall indulge in the wasteful habit of physically separating UNEs for no other apparent reason than to disrupt migration of a customer to the services of another carrier.

BellSouth contends that the Eighth Circuit Court of Appeals in Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted sub nom AT&T Corp. v. _____, ___ S. Ct. ___ (199___) determined that ILECs are not required by the Act to "combine" UNEs for CLECs. It also states that this Commission has never ordered it to "do the combining of UNEs" [BellSouth Response at 40]. Technically, BellSouth is correct. As the Eighth Circuit Court of Appeals noted, "the Act does not require the incumbent LECs to do all of the work." Id. at 813 (emphasis supplied). But failure to order BellSouth to "combine" UNEs at a CLEC's demand is a far cry from stating that BellSouth may deliberately *disconnect* UNEs that are already combined. To clarify: this Commission has not, and does not, order BellSouth affirmatively to combine UNEs for a CLEC. It does, however, order BellSouth to refrain from unnecessarily dismantling its network when elements of that network that are already combined have been ordered in that same combination by a CLEC. Even if the Act permits such anticompetitive conduct, this Commission has the authority, indeed the duty, pursuant to state law to forbid it. See, e.g., KRS 278.280 (enabling the Commission to determine the "just" and "reasonable . . . practices . . . to be observed, furnished, constructed, enforced or

employed" by a utility and to "fix the same by its order, rule or regulation"); KRS 278.512 (enabling the Commission to regulate telecommunications competition in Kentucky in the public interest) 47 U.S.C., § 252(f)(2)(a state commission in reviewing the SGAT may establish or enforce state law, including service quality standards).

UNE Prices

Commenters argue that UNE rates in the SGAT are not properly set and do not comply with the Act. However, as this Commission previously has stated, the rates it has set comply with the Act, and UNE ratesetting is clearly jurisdictional to state commissions. 47 U.S.C. 252; Iowa Utilities. Accordingly, since the SGAT rates are based upon Commission determinations and upon other standards deemed appropriate by this Commission, they are in compliance with law.

Conclusion

The Commission finds that, absent the amendments prescribed in this Order, the SGAT does not conform to applicable law. However, BellSouth may submit a reformed SGAT in accordance with this Order. If such a reformed SGAT is submitted, it shall be reviewed for compliance with the requirements stated herein and, if found to be in compliance, it shall be approved.

The Commission having considered BellSouth's SGAT and comments thereto, and having been otherwise sufficiently advised, HEREBY ORDERS that, absent the amendments prescribed herein, the SGAT shall not be approved. However, if BellSouth submits a revised SGAT which is in accordance with this Order, it shall be approved.

Done at Frankfort, Kentucky, this 21st day of August, 1998.

By the Commission

ATTEST:


Executive Director

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BEFORE THE LOUISIANA PUBLIC SERVICE COMMISSION

In Re: BellSouth Telecommunications Inc.)
Service Quality Performance Measurements ,

Docket No. U-22252-Subdocket C

STAFF FINAL RECOMMENDATION

1 On April 30, 1998, BellSouth Telecommunications, Inc. (BST or BellSouth) filed two
2 revisions to its Statement of Generally Available Terms and Conditions (SGAT), including a proposal
3 for Service Quality Performance Measurements (SQPM). At the June 17, 1998 Business and
4 Executive Session, the Louisiana Public Service Commission (LPSC or Commission) adopted on an
5 interim basis the SQPM filed by BellSouth.¹ The Commission further ordered that a rule making
6 proceeding be commenced and completed to determine final SQPM for presentation at the August
7 19, 1998 Business and Executive Session.²

8 Louisiana Public Service Commission Staff (Staff) immediately published the opening of the
9 above referenced docket and a request for comments in the next LPSC Bulletin dated June 26, 1998
10 following the June Business and Executive Session. Staff received comments on July 10, 1998 from
11 e.spire, BST, MCI, Cox and AT&T and Direct Testimony of Melissa L. Closz from Sprint and
12 Venetta Bridges from MCI. Reply comments were received on July 20, 1998 from AT&T, e.spire,
13 Sprint and BST and Reply Testimony of Venetta Bridges with MCI. A technical conference was held
14 on July 23, 1998. Staff requested additional comments on July 28, 1998 from any party with
15 additional information on statistics, penalties and levels of disaggregation. Staff received additional

¹ See Louisiana Public Service Commission General Order No. U-22252-B, dated July 1, 1998.

² Id.

1 comments from BST, MCI, AT&T and Intermedia Communications. Pursuant to the procedural
2 schedule in the above referenced docket, BST, MCI, AT&T, Sprint, e.spire, and Cox filed reply
3 comments to Staff's initial recommendation on August 10, 1998.

4 After examining the Parties' comments, reply comments, post-technical conference comments,
5 reply comments to Staff's initial recommendation, and holding a technical conference, Staff issues this
6 final recommendation concerning the BST SQPM.

7 I. INTRODUCTION

8 The Telecommunications Act of 1996 (the Act) requires that incumbent local
9 exchange carriers (ILEC) provide services and facilities in a nondiscriminatory manner and on a just
10 and reasonable basis.³ These provisions of the Act are designed to hasten the development of
11 competition in local exchange markets by ensuring incumbent carriers do not provide services and
12 facilities in a manner that favor their own retail operations over competing carriers, or in a manner
13 which favors certain competing carriers over others.⁴ More simply, an ILEC must provide services
14 and facilities to competitive local exchange carriers (CLECs) that are at least equal in quality to that
15 provided by the ILEC to itself or to any affiliate, subsidiary, or any other party to which the ILEC
16 provides service.⁵

17 Staff finds that adequate performance measurements and standards for UNEs and resold
18 services are essential to the immediate development of local competition in the State of Louisiana.

³ 47 U.S.C. 251(c)(3) and (4).

⁴ *In the Matter of Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231 (Rel. Feb. 4, 1998) para. 20,23,33.

⁵ Id.

1 Staff's final recommendation includes recommendations on performance measurements, levels of
2 disaggregation, including product disaggregation and geographic disaggregation, standards and
3 benchmarks, statistical tests, reporting, auditing and data detail, enforcement, dispute resolution and
4 a procedural schedule.

5 **II. PERFORMANCE MEASUREMENTS**

6 The categories of performance standards as generally presented by all Parties are: pre-
7 ordering, ordering, provisioning, maintenance and repair, billing, operator services and directory
8 assistance, E911, trunk group performance and collocation. Staff finds that this method of
9 categorization appropriately identifies the areas in which performance measurements are necessary.
10 With respect to specific measurements in each category, Staff recommends that the Commission
11 adopt the performance measurements attached as exhibit A to this recommendation. The
12 measurements found in Exhibit A are those measurements submitted in BellSouth's proposal which
13 have been modified as indicated in Exhibit A.⁶ BellSouth is commended for submitting such a
14 significant number of measurements. However, Staff's recommended changes, as noted in Exhibit A
15 are necessary to ensure nondiscriminatory treatment as required by the Act. Furthermore, all changes
16 recommended by Staff are based upon all comments and testimony submitted in this proceeding and
17 all information gathered at the technical conference.

18 In its Reply to Staff's Initial Recommendation, AT&T raises concerns over definitional issues
19 with respect to BellSouth's performance measurements⁷. Staff agrees that further refinement of

⁶ All changes to the SQPM have been noted in Exhibit A with the exception of Product Disaggregation. BellSouth should be ordered to update its SQPM for product disaggregation as found in Section III of this recommendation.

⁷ AT&T Reply to Staff's Initial Recommendation, pp. 1-4.

1 BellSouth's performance measurements and definitions may be required. However, Staff proposes
2 that these issues be addressed in future workshops. It has been Staff's experience that while confusion
3 may exist between the parties, these potential problems can be resolved with additional discussions
4 between BellSouth and the CLECs. Staff proposes that clarification of performance measurements
5 be addressed in future workshops as indicated in the Procedural Schedule Section of the
6 Recommendation.

7 **III. LEVELS OF DISAGGREGATION**

8 In its Reply to Staff's Initial Recommendation, BellSouth claims that to implement Staff's
9 proposed reporting at the levels of disaggregation recommended by Staff would require months of
10 additional work and millions of additional dollars of investment in reprogrammed computer software
11 and additional hardware⁸. Staff is mindful of BellSouth's concerns about the additional expenditures
12 that may be required if the Commission adopts the Staff's recommendation. Nevertheless, Staff
13 believes that further disaggregation is necessary and, as BellSouth must acknowledge, is the direction
14 in which industry is moving. In addition, as noted below, Staff has modified its Initial
15 Recommendation on product disaggregation to be reported for only provisioning and maintenance
16 and repair categories. As set forth in Exhibit A, Staff has modified its Initial Recommendation to be
17 consistent with BellSouth's Reply to Staff's Initial Recommendation that MSA reporting only applies
18 to provisioning, maintenance and repair, trunk group performance, and collocation.

19 For the record, Staff points to BellSouth's claim that to implement the LCUG proposal would
20 cost BellSouth an additional \$15,000,000 on a regional level⁹. Even if Staff's proposal was as detailed

⁸ BellSouth's Reply to Staff's Initial Recommendation, p. 2.

⁹ See Transcript, pp. 236.

1 as LCUG's, which it is not, the significance of this expenditure for BellSouth must be put into
2 perspective. The BellSouth nine state region serves approximately 22,000,000 customers. If the
3 \$15,000,000 were amortized over a five-year period, which is consistent with the depreciation time
4 period for computers and software, and if BellSouth's customers were required to pay for the
5 expenditures, it would amount to a little over one cent per month, or \$.60 for the five year period¹⁰.

6 Staff would also bring to the Commission's attention the nature of one participant's interest,
7 specifically Sprint. Sprint operates as both a CLEC and an ILEC. Sprint, as an ILEC, operates in 18
8 states and serves more than 7 million access lines. Sprint endorses greater levels of disaggregation
9 than proposed by BellSouth and generally supports Staff MSA recommendation¹¹. Sprint, as an
10 ILEC will also incur the expenditures associated with additional disaggregation in other states where
11 commissions adopt similar levels of disaggregation. Despite these additional expenditures, Sprint
12 consistently endorses greater levels of disaggregation than proposed by BellSouth. As pointed out
13 by Sprint's expert witness:

14 ..., in weighing issues from a corporate perspective, Sprint has every interest in
15 ensuring that Commission actions do not result in burdens on ILECs that have no
16 sound business purpose for CLECs, nor is Sprint interested in imposing on ILECs
17 requirements that are difficult and costly¹²
18

19 Therefore, for the reasons given here, as well as the ones addressed below, Staff continues
20 to endorse and recommend levels of product and geographic disaggregation greater than that
21 proposed by BellSouth.

¹⁰ $\$15,000,000/5 = \$3,000,000$; $\$3,000,000/22,000,000 = \$.13$; $\$.13/12 \text{ months} = \$.01124$.

¹¹ Reply Testimony of Melissa L. Closz, July 20, 1998, p. 4 and 8. Sprint's Reply to Staff's Initial Recommendation, pp. 1-2.

¹² Reply Testimony of Melissa L. Closz, July 20, 1998, p. 3.

Product Disaggregation

Generally, there were three proposals pertaining to levels of product disaggregation: the 25 levels of disaggregation proposed by the ALTS¹³ group, the 16 proposed by the LCUG¹⁴ group, and the 5 proposed by BellSouth. Staff recommends that the Commission order the following levels of product disaggregation for provisioning, maintenance and repair performance measurement categories:

- resale¹⁵ residential POTS
- resale business POTS
- resale ISDN
- resale Centrex
- resale PBX
- other resale
- unbundled loops 2-wire
 - w/interim number portability
 - w/o interim number portability
- unbundled loops all other
 - w/interim number portability
 - w/o interim number portability
- unbundled ports
- interconnection trunks

¹³ ALTS stands for Association for Local Telecommunications Services. The ALTS proposals are supported by e.spire, AT&T, MCI, Sprint, MFS, TCG, GST, and Brooks Fiber in Arizona.

¹⁴ LCUG stands for Local Competition User Group and consists of AT&T, Sprint, MCI, LCI and WorldCom.

¹⁵ All resale measurements should also report for dispatched and non-dispatched service.

1 Staff's recommended levels of product disaggregation are similar to the levels of
2 disaggregation proposed by the FCC.¹⁶ This level of disaggregation is also similar to the levels
3 proposed by BellSouth, but contains only five additional categories. Staff believes that this level of
4 disaggregation provides a reasonable compromise between the proposed levels of the various parties.
5 Specifically, Staff believes that this level of disaggregation provides a reasonable compromise
6 between the need to disaggregate performance measurements for purposes of ensuring the collection
7 of useful data and minimizing the burden placed upon the ILEC of collecting and reporting such data.

8 BellSouth's proposal for product disaggregation does not sufficiently disaggregate data by
9 product or service. AT&T described this deficiency in BellSouth's proposal:

10 "Aggregating performance for dissimilar services results in
11 comparisons of questionable value. The FCC has recognized the
12 importance of service level disaggregation.¹⁷ BellSouth's own
13 standard industry guide for CLECs indicates the need for performance
14 results disaggregated by product or service. For example, the guide
15 reflects longer service delivery intervals for PBX trunks than for a
16 comparable volume of measured business lines. BellSouth's SQM
17 proposes to average such results and report CLEC performance in the
18 generic category of resale POTS-business. In addition, the same
19 CLEC guide identifies six different types of unbundled loops, but
20 BellSouth's SQM proposes to report on only a single category of
21 unbundled loops."¹⁸

22 Staff agrees with the concerns raised by AT&T and the other CLECs and therefore,
23 recommends a level of product disaggregation that provides more useful information than proposed

¹⁶ Notice of Proposed Rulemaking, In Re: Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection & Operator Services and Directory Assistance, CC Docket No. 98-56.

¹⁷ FCC Ameritech Order ¶170.

¹⁸ See AT&T original comments pp. 9-10.

1 by BellSouth. Although Staff is not recommending that levels of product disaggregation
2 recommended by LCUG and ALTS, Staff observes that more disaggregated data is provided to the
3 individual CLECs on BellSouth's web site.¹⁹ While the CLECs expressed some concern over the data
4 published on the web site, in terms of ease of use, Staff believes that these problems can be quickly
5 resolved. It was also evident to Staff that some CLECs had not spent any significant amount of time
6 working with the data published on the web site. In addition, AT&T requests that BellSouth be
7 required to publish raw data for its own performance results on its "data warehouse web site." Staff
8 is concerned that the requested information would be considered proprietary, but Staff does
9 recommend that this be explored in future workshops.

10 For the reasons addressed by AT&T as well as the other CLECs and because of the cost
11 concerns of BellSouth, Staff recommends the above listed levels of disaggregation. In addition, Staff
12 recommends that the Commission adopt BellSouth's recommendation that the Commission review
13 and assess the performance data reported as a result of the Commission's findings in the instant
14 docket over the next six months, and through additional workshops, determine if more or less levels
15 of disaggregation are necessary.

16 **Geographic Disaggregation**

17 BellSouth proposes to report its performance measurements at the state and regional levels.
18 BellSouth contends that further disaggregation as proposed by the CLECs to the Metropolitan
19 Statistical Areas (MSA), or city level is overly burdensome and costly and unnecessary.²⁰ CLECs,
20 on the other hand, contend that further geographic disaggregation is necessary because new entrants

¹⁹ See Transcript pp.237-259.

²⁰ See BellSouth Original Reply Comments p. 6

1 are likely to operate only in extremely limited geographic market areas. Comparing BellSouth's
2 performance on a statewide basis to a CLEC operating in a few large cities would likely result in
3 misleading comparisons. According to AT&T, a meaningful "apples-to-apples" comparison requires
4 that performance data for both CLECs and BellSouth be reported for the same geographic markets
5 area.²¹ AT&T commented that one problem with BellSouth's proposal is that it essentially fails to
6 sufficiently disaggregate its reported data to meaningful levels. AT&T continues:

7 "First, BellSouth's proposal does not disaggregate its data into
8 sufficiently small geographic areas. Statewide or region-wide data
9 will yield less meaningful comparisons than data that is provided
10 according to the area in which the work is done. For example, in rural
11 areas, travel times for dispatch activities may be longer or technology
12 may be less modern than that found in urban areas. By averaging
13 performance over an entire state, BellSouth's report may disguise real
14 and important differences in performance. In addition, for CLECs
15 who operate in small geographic areas, comparison with data on a
16 statewide basis will not reveal whether BellSouth is providing them
17 non-discriminatory access within their serving area. Aggregation with
18 its "averaging" effect could mask discrimination to the detriment of
19 CLECs and ultimately Louisiana consumers."²²

20 Sprint, a CLEC in Louisiana and an ILEC in 18 other areas, explained why it is important to have
21 greater geographic disaggregation:

22 "Sprint believes that statewide reporting is too broad (unless and
23 ILEC serves only a small portion of a state) to accurately identify
24 areas of potential discrimination in service²³ and therefore supports
25 reporting on the basis of a smaller geographic unit than an entire state.
26 The Sprint ILECs - and Sprint believes other ILECs as well - already

21 See AT&T Original Reply Comments p. 4.

22 See AT&T original comments pp. 9-10.

23 E.g., in instances where competition exists in only one city in a state, statewide reporting could mask the fact that in that city, the ILEC may be giving far better service to its own customers than to the CLECs, even though its service to the CLECs matches its statewide performance to its own customers.

1 keep data in geographic units smaller than a state (e.g., by exchange
2 or by district) and as long as the ILEC uses smaller than statewide
3 reporting units for its own internal business purposes, these units
4 should suffice for purposes for these rules as well.”²⁴

5 Staff agrees with both the CLECs and BellSouth. During the early stages of competition,
6 CLECs are likely to be operating in large cities and a comparison to a statewide average of BellSouth
7 performance could be misleading. However, the Commission needs to balance the need to monitor
8 BellSouth’s performance with the burdens placed upon BellSouth in collecting and reporting
9 performance measurements.

10 Staff recommends as a compromise, that the Commission order BellSouth to report its
11 performance measurements at the regional, state, and MSA. MSA level reporting would only be
12 necessary where work is actually performed at that level. MSA level of reporting would apply only
13 to the following categories of performance measurements: provisioning, repair and maintenance, and
14 trunk groups. As pointed out by BellSouth these are the only areas where rural differences could
15 make a difference in performance reporting and potentially mask discrimination.²⁵ Providing
16 performance measurements at the MSA level in addition to the state and regional level²⁶ provides
17 more disaggregation than originally proposed by BellSouth, but Staff believes the additional
18 information is necessary and would prove useful in monitoring performance. Due to the difficulties
19 in implementing this process, Staff recommends that BellSouth be given four months to implement
20 this recommendation.

²⁴ See Sprint Direct Testimony of Melissa Closz, p. 9.

²⁵ Ibid.

²⁶ BellSouth’s proposal already agrees to report at the Regional and the State levels.

IV. STANDARDS AND BENCHMARKS

The FCC requires at a minimum that ILECs provide parity of service to CLECs for those processes where a retail analog exists and to offer CLECs a meaningful opportunity to compete for those areas of the telecommunications business where parity cannot be measured.²⁷

Most CLECs supporting the LCUG presentation endorse the use of benchmark performance standards where an analogous retail service does not exist. The same CLECs also recommend benchmarks performance standards in the event that the ILEC does not have sufficient data to determine the performance measurement for its retail operations, or refuses to provide the information.²⁸ MCI endorses the use of benchmark standards for all performance measurements.^{29, 30} BellSouth also supports the use of benchmarks where no retail analog exists.³¹ For those cases where no retail analog exists, BellSouth endorses the use of "target intervals."³² These targets, according to BellSouth, are posted on the web page and have been provided to CLECs. As BellSouth's expert explained, these target intervals can be used as a starting point to establishing performance

²⁷ Notice of Proposed Rulemaking, In Re: Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection & Operator Services and Directory Assistance, CC Docket No. 98-56.

²⁸ See AT&T Original Reply Comments p. 8

²⁹ See Transcript p. 326.

³⁰ In its Reply to Staff's Initial Recommendation, MCI continues to strongly endorse the use of the LCUG performance benchmarks, regardless of whether or not a retail analog exists. Staff finds it important to point out that the supporting documentation for the performance benchmarks endorsed by LCUG are not well documented and the benchmarks are intended to be extremely aggressive. (See Transcript pp. 353-54.) In fact, AT&T's expert characterized the LCUG performance benchmarks as a "last resort." (See Transcript p. 354) Without additional evidence as to the reasonableness of these proposed benchmarks, Staff can not endorse their use.

³¹ See Transcript p. 325.

³² See Transcript pp. 279-297.

1 benchmarks where no retail analog exists. BellSouth suggests that performance benchmarks be
2 established over time:

3 "The benchmarks, the quantitative benchmarks can be developed over time, but they
4 are not fully established at this time. And our position, basically, is the position that
5 the FCC has adopted, I hope with some urging on my part, but I'm never sure of that,
6 that it's not -- we're not far enough along in the process yet to set benchmarks. We
7 need to begin collecting the data and then over time establish these standards and
8 benchmarks as appropriate."³³

9 At this time, Staff recommends that the Commission establish performance benchmarks only
10 where no analogous retail service exists. Unless performance benchmarks are established where no
11 retail analog exists, it will be impossible for the Commission to determine if services to CLECs are
12 being provided in a nondiscriminatory manner, or that efficient CLECs are being provided with a
13 reasonable opportunity to compete. Because the information needed to establish the benchmarks
14 where no analog exists is currently not available, Staff further recommends that the Commission order
15 BellSouth to conduct special studies to establish the benchmark performance level.³⁴ Such studies
16 should rely on experiences drawn from BST's operations and be completed by November 30, 1998.
17 BST's expert indicated that requiring special studies to develop performance benchmarks would be
18 less costly than modifying current systems to create retail analogs. Specifically, Mr. Stacy
19 commented:

20 We're doing this where we contend that no retail analog exists, but if, in the
21 Commission's judgment there is something that they define as a retail analog, the
22 study approach makes a lot more sense than, than re-doing everything to capture it
23 every month.³⁵

³³ See Transcript p. 180.

³⁴ Staff recommends that the commission set benchmarks. However, reasonable benchmarks cannot be set unless BST conducts a special study of its internal operations.

³⁵ See Transcript p. 351-52.